

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 217 OF 2002

Ravindra Sahebrao Chavan .. Petitioner

V/s

State of Maharashtra & ors. .. Respondents

Mr.R.K. Mendadkar for the petitioner.

Mr.C.R. Sonawane, A.G.P. for the respondents.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.

DATE : 9TH SEPTEMBER 2004

P.C. :

1. The petitioner herein was selected to an employment under respondent No.5 Zilla Parishad on the basis of a Caste Certificate that he belongs to Tokare Koli community, which is a Scheduled Tribe. Subsequently it so transpired that the administration came to know that this certificate was a bogus certificate. This was on the basis of a police inquiry. On obtaining such a report from the police, the matter was referred to the Caste Scrutiny Committee which sent a notice to the petitioner calling upon him to attend before it. It was also stated in that notice dated 23rd July 1999 that there was a report of the police against him with respect to his caste certificate and that he will have an opportunity to make his submissions before

the Committee.

2. It appears that the petitioner did not attend before the Committee nor did he request for any personal hearing. This is as per the orders passed by the Scrutiny Committee on 8th November 2001. Inasmuch as the petitioner did not turn up before the Committee and there was a report of the Executive Magistrate that no certificate of the particular number quoted in the caste certificate of the petitioner was issued, the Committee came to the conclusion that the petitioner had failed to establish his claim, that he has submitted a fake document and therefore the Committee passed an order cancelling the caste certificate issued to him. The Committee also directed that appropriate criminal action for obtaining fake document be taken against the petitioner.

3. The consequence of this order would have been that the petitioner would have lost his job. It was the case of the petitioner that he had sent a reply to the Scrutiny Committee stating that his caste certificate was a valid one and that the same was not considered by the Caste Scrutiny Committee in arriving at its decision. He, therefore, filed the present petition.

It came up for consideration before a Single Judge, who by his order passed on 23rd January 2002 issued a notice before admission and granted status quo with respect to the petitioner's employment. He also directed that criminal action, if any contemplated against the petitioner, be not taken until further orders.

4. Thereafter the petition has reached for admission before this Bench. No reply is filed by the State. But both the counsel for the petitioner as well as for the respondents are agreeable that the matter be heard finally at the admission stage. According, it is heard finally.

5. Rule. Rule is made returnable forthwith. Heard the learned counsel for the parties.

6. Mr.Mendadkar, learned counsel for the petitioner, submitted that firstly the reply given by the petitioner has not been considered by the Scrutiny Committee. In that reply, the petitioner had pointed out that his cousin had been issued a certificate that she belongs to this particular community and in her case, the High Court had also passed an order in Writ Petition No.2961 of 1992 which was in her favour. This

is specifically stated in the reply dated 6th November 2001 sent by the petitioner. It is possible that this reply though sent to the Committee on 6th November 2001 may not have been placed before it since it had arrived at its decision on 8th November 2001. But, in any case, the fact remains that this is a submission based on some merit which is pressed into service by the petitioner. The petitioner is also relying upon a judgment of the Apex Court in Civil Appeal No.4409 of 2001 in the case of Vasant Narwade v. Suhas & others. In that matter also, the caste claim of the concerned person was invalidated on the basis that such a certificate had not been issued at all. The Apex Court, however, came to the conclusion that in that case, the appellant had not been called upon to establish his caste and to produce the material in his support. That apart, the Court also observed that the Committee ought to have returned a finding as to whether or not the appellant belonged to the particular caste as claimed by him on the basis of the certificate and other documents produced by him and should not have stopped short of that determination merely by considering whether the earlier certificate was in fact issued by Tahsildar or not.

7. Mr.Sonawane, learned A.G.P for the respondents,

submitted that in the present case, opportunity had been given to the petitioner. He had been sent a notice and if he does not care to send the reply in time, the Committee cannot be blamed. We quite see the force in the submission of Mr.Sonawane. However, it appears that on merits also, the petitioner has a submission to make inasmuch as his cousin has obtained an order from the High Court holding her to be belonging to the reserved tribe. Therefore, his submission on the basis of his sister's certificate has got to be examined. For this limited reason, in our view, the order passed by the Scrutiny Committee will have to be interfered.

8. In the circumstances, the petition is allowed in terms of prayer (b), namely that the order of the Scrutiny Committee dated 8th November 2001 will stand set aside. The matter will go back to the Committee for determination of the controversy on merits where the petitioner will have full opportunity to produce all material in support and thereafter the Authority will decide as to whether the claim of the petitioner to belong to the particular community should be accepted or rejected.

9. The petitioner is in employment of respondent

No.5 and that employment has been continued in spite of the order of the Committee in view of the interim order passed by this Court on 23rd January 2002. The petitioner will continue to be in that employment during the hearing and disposal of the proceeding before the Committee. In the event any order adverse to the petitioner is passed by the Committee, that order will not be brought into force and no action based thereon will be taken for a period of 4 weeks after the order is served on the petitioner. Similarly, since there is a stay restraining any criminal action against the petitioner, that stay will also continue for a period of 4 weeks from the date on which the order to be passed by the Committee is served on the petitioner in the event that order is adverse to him.

10. The petitioner will appear before the concerned Committee on 4th October 2004 and the Committee will endeavour to decide the matter within 4 months thereafter.

11. Rule is made absolute as above.

(H.L. GOKHALE, J.)

(SMT. NISHITA MHATRE J.)